



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Board of Medicine, Department of Health Professions
VAC Chapter Number:	18 VAC 85-110-10 et seq.
Regulation Title:	Regulations Governing the Practice of Licensed Acupuncturists
Action Title:	Inactive Licensure
Date:	4/6/01

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The amendments establish inactive licensure for acupuncturists pursuant to the specific authority granted in the Code of Virginia by Chapter 469 of the 1998 Acts of the Assembly. The amended regulations set forth the qualifications and requirements for reactivation of an inactive license or reinstatement of a lapsed license which include continuing competency as evidenced by recertification by the National Certification Commission for Acupuncture and Oriental Medicine.

Changes Made Since the Proposed Stage

Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.

No changes to proposed regulations have been made in the adoption of final amendments.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On April 6, 2001, the Board of Medicine adopted final amendments to 18 VAC 85-110-10 et seq., Regulations Governing the Practice of Licensed Acupuncturists for the purpose of establishing an inactive license and the requirements for reactivation or reinstatement.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law

Chapter 24 establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*

3. *To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
4. *To establish schedules for renewals of registration, certification and licensure.*
5. *To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
7. *To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
8. *To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
9. *To take appropriate disciplinary action for violations of applicable law and regulations.*
10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*

- 12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

In addition to provisions in § 54.1-2400 which authorizes the Board to set qualification standards for renewal and to grant inactive licensure, the Code provides a mandate for licensure and the promulgation of regulations for that purpose in:

§ 54.1-2956.9. Unlawful to practice acupuncture without license; unlawful designation as acupuncturist; Board to regulate acupuncturists. --*It shall be unlawful for a person to practice or to hold himself out as practicing as an acupuncturist unless he holds a license as such issued by the Board.*

In addition, it shall be unlawful for any person who is not licensed under this chapter, whose licensure has been suspended or revoked, or whose licensure has lapsed and has not been renewed to use in conjunction with his name the words "licensed acupuncturist" or to otherwise by letters, words, representations, or insignias assert or imply that he is licensed to practice acupuncture.

The Board of Medicine shall prescribe by regulation the qualifications governing the licensure of acupuncturists. Such regulations shall not restrict the practice of this profession to practitioners regulated by the Board on June 30, 1992, to practice the healing arts. The regulations shall at a minimum require that, prior to performing acupuncture, any acupuncturist who is not licensed to practice medicine, osteopathy or podiatry shall obtain written documentation that the patient had received a diagnostic examination from and had been referred by a licensed physician with regard to the ailment or condition to be treated. The regulations may include requirements for approved education programs, experience, examinations, periodic review of the diagnosis and treatment progress, and referral and rereferral of patients.

§ 54.1-2956.10. Requisite training and educational achievements of acupuncturists. --*The Board shall establish a testing program to determine the training and educational achievements of acupuncturists, or the Board may accept other evidence such as successful completion of a national certification examination, experience, or completion of an approved training program in lieu of testing and shall establish this as a prerequisite for approval of the licensee's application.*

The Assistant Attorney General who provides counsel to the Board of Medicine has provided a letter of assurance that the amended regulations are consistent with statutory law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the amendments is to establish inactive licensure for acupuncturists pursuant to the specific authority granted in the Code of Virginia by Chapter 469 of the 1998 Acts of the Assembly. The amended regulations set forth the qualifications and requirements for reactivation of an inactive license which are consistent with protection of the public health and safety. Documentation of

current certification by NCCAOM will ensure that the person resuming active practice or licensure in Virginia has maintained current knowledge and skills to appropriately manage and treat patients. Information on practice and licensure in other jurisdictions will ensure that the Board is informed about the practice of the acupuncturist during the period in which he has not held an active license in the Commonwealth. The Board reserves the right to deny reactivation or reinstatement if it is determined that the licensee has committed an act in violation of § 54.1-2914 of the Code of Virginia.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The amended regulation establishes an inactive license for acupuncturist who are not actively practicing in Virginia but want to maintain a license. Requirements for reactivation or reinstatement of a lapsed license include current certification by NCCAOM, the national credentialing body for the profession, and information on practice and licensure in other jurisdictions.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

ISSUE 1: Establishment of an inactive license.

The Department of Health Professions sought legislation in the 1998 General Assembly to give authorization to all boards to issue an active license. Some boards within the Department already had such authority in the practice act for the particular professions regulated, but an amendment to § 54.1-2400 granted general authority to set out the qualifications, fees, and conditions for reactivation of inactive licensure.

The Board of Medicine currently requires a licensed acupuncturist to maintain current certification by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) in order to renew a license. NCCAOM requires 60 PDA's (professional development activities) within a four-year recertification period and practice of 250 patients during a 12-month period within the last 4 years. For someone who is not planning to actively practice for a period of time, it may be unnecessarily burdensome to have to take the continuing education hours required by NCCAOM to maintain certification. By taking an inactive status, the licensee is not required to maintain certification but is also not permitted to practice. If the licensee wants to reactivate a license, it would be necessary to provide documentation that he has first taken the continuing education hours necessary to reactivate his certification with NCCAOM.

Advantages and disadvantages

There are no disadvantages for the public which remains protected by requirements that assure that a licensed acupuncturist is current in his skills and knowledge. By requiring an inactive licensee to be recertified by the NCCAOM, the Board is providing assurance of minimal competency as it does in initially granting a license to practice. For persons who do not want to actively practice for a period of time, these regulations will allow them to maintain an inactive license and eliminate the need to reapply for reinstatement of an expired license.

ISSUE 2: Requirements for renewal and reinstatement of an expired license.

The Board proposes to delete the provision that would permit a licensee who was not initially NCCAOM certified to renew licensure if the licensee provided evidence of continuing competency substantially equivalent to requirements for NCCAOM recertification. That provision is now unnecessary because NCCAOM is required for initial licensure; it was put in the regulations because one individual was initially licensed without NCCAOM certification. That individual now has NCCAOM certification, so the regulation is no longer needed.

In proposing regulations for reactivation of an inactive license, the Board determined that it was also necessary to amend requirements for reinstatement of a license expired for two years or more to state that the expired license may only be reinstated by submission of a reinstatement application which includes information on practice and licensure in other states during the period in which the license was lapsed in Virginia.

Advantages and disadvantages

The amended regulation protects the public by requiring that the applicant provide complete information on practice and licensure in other jurisdictions during that period. That provides the Board with an opportunity to check on the safety and professionalism of the licensee who may have been in practice elsewhere during the time the license was lapsed in Virginia. The Board also maintains its authority to deny reinstatement to anyone who has committed acts in violation of law or regulation.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

A public hearing was held before the Board of Medicine at the Department of Health Professions in Richmond on January 11, 2001. No comment was presented at that time nor was any written or electronically submitted comment received.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

18 VAC 85-110-150. Biennial renewal of licensure.

An amendment deletes the provision that a person could renew license if he was not originally NCCAOM certified, if he provided evidence of continuing competency substantially equivalent to the requirements for NCCAOM recertification. Other amendments to this section are editorial and not substantive.

18 VAC 85-110-155. Inactive licensure

This new section would establish a category of inactive licensure and specify that such a license holder is not required to maintain certification by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), but is likewise not entitled to practice acupuncture.

To reactivate an inactive license, the acupuncturist is required to provide documentation of having renewed or maintained NCCAOM certification and to pay the difference between the current inactive and active renewal fee.

The Board reserves the right to deny a request for reactivation to any person determined to have committed a violation of these regulations or of § 54.1-2914 of the Code of Virginia.

18 VAC 85-110-160. Reinstatement.

Amendments to the section on reinstatement add a requirement for information on practice and licensure in other jurisdictions during the period in which the license was lapsed in Virginia. That information is currently required on the application but has not been so stated in regulation.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The Board has reviewed the adopted regulations and concluded that the amendments have no effect on strengthening the authority and rights of parents, on economic self-sufficiency, on the marital commitment or on disposable family income.